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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the	)	
Telecommunications Act of 1996:	)	
	)	CC Docket No. 96-115
Telecommunications Carriers' Use	)	
Of Customer Proprietary Network	)	
Information and Other Customer	)	
Information	)	
	)	

PETITION OF SPRINT CORPORATION FOR RECONSIDERATION

Sprint Corporation ("Sprint") hereby respectfully requests that the Commission reconsider its *Second Report and Order*, FCC 98-27, released February 26, 1998, in the above-referenced proceeding (*Second Report*) in two respects. First, the Commission should eliminate the requirement for an electronic audit mechanism as set forth in Section 64.2009 of the Rules, 47 C.F.R. §64.2009, since any perceived benefits of the audit mechanism are clearly outweighed by the costs to carriers to develop and implement such mechanism.[1] Second, the Commission should revisit and reverse its interpretation of the relationship between Sections 222 and Section 272 of the Act since the Commission's interpretation here assumes that a Bell operating company (BOC) and its interLATA affiliate are one entity for purposes of CPNI sharing and therefore "undermines the structural separation safeguards crafted by Congress." Statement of Commissioner Ness, Dissenting in Part (Ness Statement) at 1.

[1] As discussed below, more time will be needed to implement software flags to record whether the customers have approved the marketing use of their CPNI.

A. The Development And Implementation Of Systems To "Flag" Accounts Require More Time And Audit Systems Cannot Be Justified.

Section 64.2009 imposes a number of safeguards "to prevent unapproved use, disclosure, and access to customer CPNI by carrier personal and unaffiliated entities." *Second Report* at ¶193. For the most part, Sprint believes that such safeguards are reasonable and necessary to ensure carrier compliance with the new CPNI requirements as set forth in Section 222 of the Act and as implemented by the Commission. Sprint agrees, for example, that compliance with Section 222 requires carriers to train their employees who have access to a customer's CPNI as to when they are and are not authorized to use such information; to "maintain internal procedures to handle employees that misuse CPNI contrary to the carriers' stated policy"; and to "establish a supervisory review process" that helps prevent the misuse of CPNI by "over-zealous sales representatives" in outbound marketing campaigns. *Second Report* at ¶¶198 and 200.

Moreover, Sprint agrees that carriers should be required to "develop and implement software systems that 'flag' customer service records" to "indicate whether the customer has approved the marketing use of his or her CPNI and reference the existing service subscription." *Id.* at ¶198. Sprint, however, wishes to inform the Commission that the development and implementation of such software "flags" will take longer than the eight month grace period carriers will have before the Commission begins enforcement of such safeguard. Sprint's computer personnel and resources are committed full-time to supporting the operations, maintenance and billing for Sprint's local and long distance services. On top of those considerable responsibilities, Sprint has the added challenge of modifying its systems to ensure against the disabling of its computers and the corruption of its data when the millennium ends, *i.e.*, the year 2000 problem. As numerous press reports has explained, this is a massive undertaking not only for the telecommunications industry, but for other industries and the

government as well. The problem affects almost every layer, if not every layer, of a given system's architecture and practically all, if not all, computer applications and platforms. The problem is made worse because the extremely limited time left -- 19 months -- in which to check and likely change literally every facet of every computer system.

Plainly, this undertaking severely constrains the ability of companies to devote resources to other projects involving modifications of computer systems. At a minimum, Sprint estimates that it will need an additional 16 months after the initial 8-month grace period expires in which to develop and implement the necessary software changes to flag its customer service records to indicate whether the customer has approved the marketing use of his or her CPNI. Given limited resources and the priority of other challenges (including the year 2000 challenge), Sprint respectfully requests that the Commission extend its "suspension of enforcement" from 8 months to at least 24 months.

The above-listed safeguards, coupled with the requirement for a publicly available corporate certification of compliance, will, Sprint believes, be effective in ensuring carrier compliance with the requirements imposed by Section 222. There is simply no need -- and based on a cost/benefit analysis, no justification -- to require that carriers also establish an "electronic audit mechanism that tracks access to customer accounts." *Second Report* at ¶199.

The Commission suggests that the costs of developing such audit mechanism "will not be overly burdensome" since many carriers already have mechanisms in place "to track employee use of company resources for a variety of business purposes unrelated to CPNI compliance." *Id.* (citing *ex parte* presentations from two RBOCs, AT&T and Airtouch). However, the Commission does not explain why it believes that carrier tracking systems used for non-CPNI purposes -- to the extent that such systems exist -- can be adapted to track CPNI access by

employees without undue burden. In fact, the costs of establishing a mechanism that would "be capable of recording whenever customer records are opened, by whom and, for what purpose," *id.*, would be significant. For example, Sprint's local telephone and long distance subsidiaries currently have about 34 system applications that either process or store customer specific data. To comply with the Commission's requirement for an audit mechanism, each of these applications would have to modified. Sprint estimates that it would have to devote nearly 265,000 person-hours -- which translates into about 127 employees working full time for one year -- at a cost of nearly $19.6 million in order to make the necessary modifications.[2]

These costs dwarf any conceivable benefit that would be realized by having carriers implement an audit mechanism. Certainly, the two reasons advanced by the Commission for the audit mechanism do not justify requiring carriers to expend such resources.

The Commission's first reason is that "awareness of this 'audit trail' will discourage unauthorized 'casual' perusal of customer accounts." *Id.* But, the Commission does not cite to any record evidence demonstrating that "unauthorized casual perusal of customer accounts" is a significant problem. And, the Commission does not explain why supervisory review coupled with employee training which clearly and unequivocally sets forth the carrier's policies as to when and under what circumstances a customer's CPNI may be accessed and which clearly and unequivocally states that violators of the carrier's CPNI access policies would be subject to disciplinary action, including termination, will not be effective in preventing the "unauthorized casual perusal of customer accounts." Rational decision-making requires that the Commission have evidence that a problem exists before seeking to impose a "solution" to such "problem."

[2]Sprint is hardly in the position to devote 127 of its employees full time to the project of developing an audit mechanism. Sprint should note that these costs do not include the costs of maintaining the electronic audit mechanism on an ongoing basis.

Moreover, the public interest in ensuring that customers receive efficient service at reasonable rates requires that the Commission consider other less expensive but comparably effective solutions to problems before saddling the industry with an approach that involves significant costs that will have to be recovered from the carriers' customers. Plainly, the Commission has failed to satisfy either criterion in promulgating the requirement for an electronic audit mechanism.

The Commission's other reason for requiring that carriers expend resources to establish an electronic audit mechanism is also not well-taken. According to the Commission, an "audit trail" is necessary because it will "afford a means of documentation that would either support or refute claimed deliberate carrier CPNI violations." *Id.* However, this explanation assumes that carriers are likely to violate their statutory duty imposed by Section 222 regarding the use of CPNI and that therefore a mechanism has to be in place that presumably will enable the Commission or complaining party to easily prove such violations.

Again, the Commission cites no record evidence to support the notion that carriers have any incentive to use the personal information of their customers in ways that contravene the requirements of Section 222 and the Commission's rules implementing such requirements. Nor could it. An IXC, for example, must continue to cultivate the good-will of its customers in order to maintain and increase its market share in the competitive long distance market. It can hardly expect to prosper -- or even survive -- if it develops a reputation of misusing its customers' proprietary information. Local carriers are (or will be) under similar constraints as they begin to face emerging competition in their local exchange and intraLATA toll markets.

Moreover, the Commission's belief that it needs an "audit trail" both to discourage carrier abuse of CPNI as well as provide documentation of such abuse is at odds a carrier's right to a

presumption of innocence. The Act, of course, presumes that carriers will meet their statutory responsibilities since it places the burden of proving a violation of the Act -- or at least presenting a *prima facie* case of such violation -- on the person claiming that a carrier has acted in a way that contravenes the Act. 47 U.S.C. §§206-208. Here, the Commission has already determined, albeit without any documentation whatsoever, that carriers have violated Section 222. Thus, it seeks to "discourage" future violations and at the same time provide "documentation" of such future violations by requiring that all carriers develop and maintain an audit mechanism. Sprint respectfully suggests that the imposition of such a costly requirement is only justified on an individual carrier basis and only where the Commission has solid evidence that the carrier has misused its customers' CPNI. It should not be imposed on industry-wide basis especially where there is no demonstration of wide-spread abuse.

In sum, Sprint believes that the Commission must eliminate the requirement that carriers develop and maintain an electronic audit mechanism. As explained, the requirement is totally unjustified.

B. The BOCs Should Not Be Allowed To Share CPNI With Their Separate Affiliates Without Customer Consent.

The Commission's decision to enable a BOC to share its customer's local CPNI with its interLATA affiliate when the affiliate is providing interLATA services to such customer without first obtaining customer approval is totally inconsistent with the statutory scheme created by Congress. As Commissioner Ness has explained, such decision "undermines the [Section 272] structural separation safeguards crafted by Congress." Ness Statement at 1.

The structural separation requirements imposed by Section 272 requires that the BOC and its interLATA affiliate "operate independently" from one another (§272(b)(1)) and that all transactions between them be on an "arm's length basis," "reduced to writing," and "available for

public inspection" (§272(b)(5). Moreover, a BOC is prohibited from discriminating in favor of its interLATA affiliate "in the provision or procurement of goods, services, facilities, and information..." (§272(c)(1)). Such language is clear and does not allow for exceptions. Yet the Commission purports to find such exception in Section 222 and in the total service approach the Commission has adopted thereunder which allows for the sharing of CPNI among affiliates without customer approval.

The Commission's decision affords the interLATA affiliate of the BOC an unwarranted advantage. It will have complete access to the BOC's customer local CPNI once it sells such customer interLATA (or even intraLATA) service. In contrast, an unaffiliated IXC will not be able to gain unfettered access to its customer's local CPNI resident with the BOC. Rather, it must obtain the customer's approval and then present such approval to the BOC. The delay and the opportunity for the bottleneck BOC to discriminate against unaffiliated IXCs presented by such process can be intolerable in a competitive market. Moreover, the process will raise the costs of the unaffiliated IXC vis-à-vis the BOC's interLATA affiliate and thereby weaken its ability to compete. The conferral of such advantages on the BOC's interLATA affiliate is not "what Congress intended." Ness Statement at 2.

Commissioner Ness explains that the requirements of Section 272 can be easily reconciled with those of Section 222 without damaging competition by simply requiring that the BOC interLATA affiliate obtain the consent of its customer before being afforded the local CPNI of such customer. *Id.* Such an approach would be "consistent with" what the Commission says is "the regulatory symmetry Congress intended for carrier marketing activities." *Second Report* at ¶167. Unfortunately, under the Commission's approach here, the BOCs will be giving their affiliates a competitive advantage in contravention of Section 272. For this reason, the

Commission must reverse that its decision to allow for the sharing of CPNI between BOCs and their interLATA affiliates without customer approval.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Petition For Reconsideration** of Sprint Corporation was sent by hand or by United States first-class mail, postage prepaid, on this the 26th day of May, 1998 to the parties on the attached list.

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